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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 AARON RAISER,

11 Plaintiff,

12 v.

13 CITY OF MURRIETA, ET AL.,

14 Defendant(s).
15

Case No. EDCV 19-183-DSF (KK)

**ORDER ACCEPTING AMENDED
FINDINGS AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended
18 Complaint, the relevant records on file, and the Amended Report and
19 Recommendation of the United States Magistrate Judge. The Court has engaged in de
20 novo review of those portions of the Amended Report to which Plaintiff has
21 objected. The Court accepts the findings and recommendation of the Magistrate
22 Judge.

23 IT IS THEREFORE ORDERED that (1) Defendants' Motion to Dismiss is
24 GRANTED; (2) Claims Two, Three, Five, Eight, Nine, Ten, Eleven, and Twelve in
25 the First Amended Complaint are DISMISSED with prejudice and without leave to
26 amend; (3) all other claims in the First Amended Complaint are DISMISSED with
27 leave to amend; and (4) Plaintiff's Motion for Partial Summary Judgment is DENIED
28 as MOOT.

1 IT IS FURTHER ORDERED THAT **within twenty-one (21) days** of the
2 service date of this Order, Plaintiff choose one of the following options:

3 1. Plaintiff may file a Second Amended Complaint to attempt to cure the
4 deficiencies discussed in the Amended Report and Recommendation regarding claims
5 that have not been dismissed with prejudice in this Order. The Clerk of Court is
6 directed to mail Plaintiff a blank Central District civil rights complaint form to use for
7 filing the Second Amended Complaint, which the Court encourages Plaintiff to use.

8 If Plaintiff chooses to file a Second Amended Complaint, he must clearly
9 designate on the face of the document that it is the “Second Amended Complaint,” it
10 must bear the docket number assigned to this case, and it must be retyped or
11 rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not
12 include new defendants or allegations that are not reasonably related to the claims
13 asserted in the First Amended Complaint. In addition, the Second Amended
14 Complaint must be complete without reference to the First Amended Complaint,
15 Complaint, or any other pleading, attachment, or document.

16 An amended complaint supersedes the preceding complaint. Ferdik v.
17 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will treat
18 all preceding complaints as nonexistent. Id. **Any claim raised in a preceding**
19 **complaint and not dismissed with prejudice is waived if it is not raised again in**
20 **the Second Amended Complaint.** Lacey v. Maricopa Cty., 693 F.3d 896, 928 (9th
21 Cir. 2012).

22 The Court advises Plaintiff that it generally will not be well-disposed toward
23 another dismissal with leave to amend if Plaintiff files a Second Amended Complaint
24 that continues to include claims on which relief cannot be granted. “[A] district
25 court’s discretion over amendments is especially broad ‘where the court has already
26 given a plaintiff one or more opportunities to amend his complaint.’” Ismail v. Cty.
27 of Orange, 917 F. Supp. 2d 1060, 1066 (C.D. Cal. 2012); see also Ferdik, 963 F.2d at
28


1 1261. Thus, if Plaintiff files a Second Amended Complaint with claims on
2 which relief cannot be granted, the Second Amended Complaint will be
3 dismissed without leave to amend and with prejudice.

4 2. Alternatively, Plaintiff may voluntarily dismiss the action without
5 prejudice, pursuant to Federal Rule of Civil Procedure 41(a). The Clerk of Court is
6 directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court
7 encourages Plaintiff to use if he chooses to voluntarily dismiss the action.

8 Plaintiff is explicitly cautioned that failure to timely respond to this
9 Order will result in this action being dismissed for failure to state a claim, or
10 for failure to prosecute and/or obey Court orders pursuant to Federal Rule of
11 Civil Procedure 41(b).

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13 IT IS SO ORDERED.

14 DATED: July 13, 2020

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16 Honorable Dale S. Fischer
17 UNITED STATES DISTRICT JUDGE
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FULL NAME

COMMITTED NAME (if different)

FULL ADDRESS INCLUDING NAME OF INSTITUTION

PRISON NUMBER (if applicable)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER

To be supplied by the Clerk

PLAINTIFF,
v.

DEFENDANT(S).

CIVIL RIGHTS COMPLAINT
PURSUANT TO *(Check one)*

- ☐ 42 U.S.C. § 1983
☐ *Bivens v. Six Unknown Agents* 403 U.S. 388 (1971)

A. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits in a federal court while a prisoner: ☐ Yes ☐ No
2. If your answer to "1." is yes, how many? _____

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

- a. Parties to this previous lawsuit:

Plaintiff _____

Defendants _____

- b. Court _____

- c. Docket or case number _____

- d. Name of judge to whom case was assigned _____

- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) _____

- f. Issues raised: _____

- g. Approximate date of filing lawsuit: _____

- h. Approximate date of disposition _____

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? ☐ Yes ☐ No

2. Have you filed a grievance concerning the facts relating to your current complaint? ☐ Yes ☐ No

If your answer is no, explain why not _____

3. Is the grievance procedure completed? ☐ Yes ☐ No

If your answer is no, explain why not _____

4. Please attach copies of papers related to the grievance procedure.

C. JURISDICTION

This complaint alleges that the civil rights of plaintiff _____
(print plaintiff's name)

who presently resides at _____
(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

(institution/city where violation occurred)

on (date or dates) _____, _____, _____.
(Claim I) (Claim II) (Claim III)

NOTE: You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

2. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

3. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

4. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

5. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

	CASE NUMBER
v.	
Plaintiff(s),	
Defendant(s).	NOTICE OF DISMISSAL PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 41(a) or (c)

☐ This action is dismissed by the Plaintiff(s) in its entirety.

☐ The Counterclaim brought by Claimant(s) _____ is dismissed by Claimant(s) in its entirety.

☐ The Cross-Claim brought by Claimants(s) _____ is dismissed by the Claimant(s) in its entirety.

☐ The Third-party Claim brought by Claimant(s) _____ is dismissed by the Claimant(s) in its entirety.

☐ **ONLY** Defendant(s) _____

The dismissal is made pursuant to F.R.Civ.P. 41(a) or (c).

Signature of Attorney/Party

F.R.Civ.P. 41(c): Counterclaims, cross-claims & third-party claims may be dismissed before service of a responsive pleading or prior to the beginning of trial.